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DEPARTMENT OF COMMERCE

International Trade Administration

[A-560-832, A-580-896, and A-583-862]

Antidumping Duty Investigations on Polyethylene Terephthalate Resin from Indonesia, the Republic of Korea, and Taiwan; Preliminary Determinations of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist for imports of polyethylene terephthalate (PET) resin from certain producers and exporters from Indonesia, the Republic of Korea (Korea), and Taiwan.

DATES: Applicable [Insert Date of Publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Gene H. Calvert, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3586.

SUPPLEMENTARY INFORMATION

Background

On September 26, 2017, Commerce received antidumping duty (AD) petitions concerning imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan, on behalf of DAK Americas LLC; Indorama Ventures USA, Inc. (Indorama Ventures); M&G Polymers USA, LLC; and Nan Ya Plastics Corporation, America (collectively, the petitioners).¹ On March

¹ See Petitioners' Letter, "Petition for the Imposition of Antidumping Duties – Certain Polyethylene Terephthalate Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan," dated September 26, 2017 (the Petitions). However, Indorama Ventures is not a petitioner with respect to the Indonesia petition.

27, 2018, the petitioners timely filed allegations that critical circumstances exist with respect to imports of PET resin from producers and exporters from Indonesia, Korea, and Taiwan.² In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist by no later than the date of the preliminary determination. In the subject AD investigations, the petitioners requested that Commerce issue preliminary critical circumstances determinations on an expedited basis.³

Section 733(e)(1) of the Tariff Act of 1930, as amended (the Act), provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Sections 19 CFR 351.206(h)(2) and (i) provide that imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Commerce’s regulations also

² See Petitioners’ Letter, “Polyethylene Terephthalate (PET) Resin from Indonesia, Korea, and Taiwan – Critical Circumstances Allegation,” dated March 27, 2018 (Critical Circumstances Allegations).

³ *Id.* at 2.

provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.⁴

Critical Circumstances Analysis

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries regarding imports of the same merchandise. The Critical Circumstances Allegations show that other countries have current measures in place covering imports of the same merchandise from the countries subject to these allegations.⁵ For example, imports of PET resin from Indonesia have been subject to an AD measure in Malaysia since March 2015; imports of PET resin from Korea have been subject to an AD measure in Argentina since September 2017; and imports of PET resin from Taiwan have been subject to an AD measure in Argentina since September 2016.⁶ Therefore, based on the AD measures in third-country markets referenced above, we preliminarily determine that there is a history of dumping of PET resin exported from Indonesia, Korea, and Taiwan.

⁴ See 19 CFR 351.206(i).

⁵ See Critical Circumstances Allegations at Attachment 1 referencing, “Committee on Anti-Dumping Practices, Semi-Annual Report Under Article 16.4 of the Agreement – Argentina,” WTO no. G/ADP/N/300/ARG (17-4516), dated August 24, 2017; “Committee on Anti-Dumping Practices, Semi-Annual Report Under Article 16.4 of the Agreement – Brazil,” WTO no. G/ADP/N/294/BRA (17-1149), dated February 24, 2017; “Committee on Anti-Dumping Practices, Semi-Annual Report under Article 16.4 of the Agreement – Indonesia,” WTO no. G/ADP/N/294/IDN (17-1537), dated March 21, 2017; “Committee on Anti-Dumping Practices, Semi-Annual Report Under Article 16.4 of the Agreement – Malaysia,” WTO no. G/ADP/N/294/MYS (17-1375), dated March 8, 2017; and “Committee on Anti-Dumping Practices, Semi-Annual Report Under Article 16.4 of the Agreement – South Africa,” WTO no. G/ADP/N/294/ZAF (17-1440), dated March 13, 2017.

⁶ *Id.*

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value pursuant section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in petitions.⁷ Commerce has found margins of 15 percent or more (for constructed export price) to 25 percent or more (for export price) to be sufficient for this purpose.⁸ Dumping margins alleged in the three AD petitions regarding the Critical Circumstances Allegations significantly exceed the 15 to 25 percent threshold: 53.50 percent for Indonesia,⁹ 101.41 percent for Korea,¹⁰ and 45 percent for Taiwan.¹¹ Because the margins alleged in the Petitions exceed the threshold sufficient to impute that importers had knowledge that exporters of PET resin from Indonesia, Korea, and Taiwan were selling subject merchandise at less than fair value, we preliminarily determine that importers knew or should have known that producers/exporters of PET resin in all three countries subject to the Critical Circumstances Allegations were selling subject merchandise to the United States at less than fair value.

⁷ See, e.g., *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) (unchanged in the final determinations); see also *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002) (unchanged in the final determination).

⁸ *Id.*; see also *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997) (unchanged in the final determination) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004) (unchanged in the final determination).

⁹ See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume III Relating to Indonesia Antidumping Duties," dated October 3, 2017 at 9.

¹⁰ See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume IV Relating to the Republic of Korea Antidumping Duties," dated October 3, 2017 at 10.

¹¹ See Petitioners' Letter, "Polyethylene Terephthalate ("PET") Resin from Brazil, Indonesia, the Republic of Korea, Pakistan, and Taiwan – Petitioners' Amendment to Volume VI Relating to Taiwan Antidumping Duties," dated October 3, 2017 at 7.

To determine whether importers knew or should have known that there was likely to be material injury caused by reason of such imports pursuant section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the International Trade Commission (ITC).¹² If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, material injury (as opposed to the threat of injury), Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. In the subject AD investigations, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.¹³ Therefore, the ITC’s preliminary injury determination in these investigations is sufficient to impute importer knowledge.

Massive Imports

Because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we next examined whether imports of subject merchandise from Indonesia, Korea, and Taiwan were “massive” over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). In making this determination, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. It is Commerce’s practice to base its critical circumstances analysis on

¹² See, *e.g.*, *Certain Potassium Phosphate Salts from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

¹³ See *Polyethylene Terephthalate (PET) Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan; Determinations*, 82 FR 53523 (November 16, 2017).

all available data, using base and comparison periods of no less than three months.¹⁴ For these preliminary determinations of critical circumstances, Commerce is defining the base and comparison periods within the bounds of its normal practice by extending the comparison period through January 2018 as shipment data is available on the record to do so. This is consistent with our past practice.¹⁵

Thus, in order to preliminarily determine whether there has been a massive surge in imports for each cooperating mandatory respondent, using shipment data submitted by the cooperating mandatory respondents, and shipment data of subject merchandise compiled by the ITC, Commerce compared the total volume of shipments from October 2017 through January 2018 (*i.e.*, all months for which shipment data was available) with the preceding four-month period of June 2017 through September 2017.¹⁶ For “all others,” Commerce subtracted shipments reported by the cooperating mandatory respondents from the ITC data. For non-cooperating mandatory respondents (*i.e.*, those mandatory respondents that did not respond to our critical circumstances questionnaire or who otherwise indicated their unwillingness to participate in the investigations), we preliminarily determine, on the basis of adverse facts available,¹⁷ that there has been a massive surge in imports. Accordingly, based on our analysis of information on the record, we preliminarily determine the following producers/exporters of

¹⁴ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances; Certain Frozen Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); see also *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 10, 2017) (*OTR Tires from India*) and accompanying “Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India,” at 39-41.

¹⁵ *Id.*

¹⁶ These base and comparison periods satisfy the regulatory provisions that the base period be at least three months long and the base period have a comparable duration. Commerce gathered ITC shipment data under the harmonized tariff schedule numbers, 3907.61.0000 and 3907.69.0000.

¹⁷ See section 776 of the Act.

subject merchandise had an increase of 15 percent or more in imports of subject merchandise during the comparison period when compared to the base period, satisfying the massive surge criteria, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).¹⁸

- Indonesia (A-560-832): Indorama Polymers Public Co., Ltd.; All Other Producers/Exporters
- Korea (A-580-896): Lotte Chemical Corp. (REGD); TK Chemical Corp.; All Other Producers/Exporters
- Taiwan (A-583-862): Far Eastern New Century Corporation; Far Eastern Textile Ltd.; Worldwide Polychem (HK), Ltd.; All Other Producers/Exporters

In addition, based on record information, we also find that certain producers/exporters did not experience an increase of 15 percent or more in imports of subject merchandise during the comparison period when compared to the base period. As such, the following producers/exporters of subject merchandise did not have massive imports, as defined by section 733(e)(1)(B) of the Act and 19 CFR 351.206(h).¹⁹

- Indonesia (A-560-832): PT. Indo-Rama Synthetics Tbk.
- Korea (A-580-896): SK Chemicals Co., Ltd.
- Taiwan (A-583-862): Shinkong Synthetic Fibers Corporation

Finally, we note that in the AD investigation regarding imports of subject merchandise from Korea, respondent company SKC Co., Ltd. (SKC) submitted a certification, in lieu of a questionnaire response, that it did not make shipments of subject merchandise to the United States during the period of investigation, and there is no information on the record to contradict

¹⁸ See respective preliminary critical circumstances calculation memoranda for each proceeding, dated concurrently with this *Federal Register* notice.

¹⁹ *Id.*

this claim. As a result, we are not making a critical circumstances determination with respect to SKC.²⁰

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of PET resin shipped by certain producers/exporters. Our findings are summarized as follows:

Country	Case Number	Affirmative Preliminary Critical Circumstances Determination	Negative Preliminary Critical Circumstances Determination
Indonesia	A-560-832	Indorama Polymers Public Co., Ltd.; All Other Producers/Exporters	PT. Indo-Rama Synthetics Tbk.
Korea	A-580-896	Lotte Chemical Corp. (REGD); TK Chemical Corp.; All Other Producers/Exporters	SK Chemicals Co., Ltd.
Taiwan	A-583-862	Far Eastern New Century Corporation; Far Eastern Textile Ltd.; Worldwide Polychem (HK), Ltd.; All Other Producers/Exporters	Shinkong Synthetic Fibers Corporation

Final Critical Circumstances Determinations

We will issue our final determinations concerning critical circumstances when we issue our final less than fair value determinations. All interested parties will have the opportunity to address these preliminary determinations in case briefs to be submitted after completion of the preliminary less than fair value determinations.

ITC Notification

²⁰ SKC is a distinct entity from mandatory respondent SK Chemicals Co., Ltd. (SK Chemicals), which had shipments during the period of investigation and which submitted a complete questionnaire response. SK Chemicals submitted shipment data for purposes of our critical circumstances determination, which has been analyzed for these preliminary critical circumstances determinations. We have reached a negative finding of critical circumstances for SK Chemicals, as indicated above.

In accordance with sections 733(f) of the Act, Commerce will notify the ITC of its preliminary determinations.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports exported by certain producers and exporters, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates,²¹ we will instruct Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

²¹ The preliminary determinations concerning the sales at less than fair value investigations are currently scheduled for April 27, 2018.

This notice is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.206(c).

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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